

The Rejection Under 35 U.S.C. § 103(a)

The Examiner has maintained the rejection of claims 1 and 3-10 under 35 U.S.C. §103(a) as allegedly being obvious over Zhu et al., August 12, 1999, *Nature* 400:687-693 (“Zhu”) in view of Hustad et al., U.S. Patent Number 6,087,122, filed July 21, 1999 (“Hustad”). Specifically, the Examiner has requested an affidavit or declaration supporting Applicants’ statement that they can antedate Zhu and Hustad. Applicants submit the following remarks and declaration in response.

Zhu and Hustad are not applicable prior art references. The Applicants possessed the claimed invention of the present application prior to July 21, 1999, which is the earlier of the two effective dates of Zhu and Hustad. Applicants submit herewith a Declaration of the Inventors under 37 C.F.R. §1.131 (hereafter “the Declaration”) accompanied by a cover letter attached to a draft of the present application. As part of the Declaration, the Inventors state that they possessed the claimed invention prior to July 12, 1999, which is evidenced by the accompanying cover letter and draft of the application sent by Ann T. Kadleck of Seed and Berry, LLP, counsel for the Applicants prior to July 12, 1999. Because Zhu and Hustad were not published more than one year before the filing date of the present Application and the Inventors possessed the claimed invention prior to the publication of Zhu and Hustad, Zhu and Hustad cannot be cited as prior art for the Examiner’s rejection under 35 U.S.C. §103(a). Therefore, Applicants respectfully submit that the Examiner’s rejection should be withdrawn.

CONCLUSION

Applicants believe that the Examiner’s rejection has been overcome. If any outstanding issues remain, the Examiner is invited to telephone the undersigned at the telephone number indicated below to discuss the same.

Date January 28, 2002

Respectfully submitted,
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Enclosures